In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Msc. Petition No.2057/2007
Umar Daraz & Co. through Umar Daraz
Versus State & Ors, Hariram

Date of Order ::: 10/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Pankaj Sharma, for petitioner

Instant petition U/s 482, CrPC has been filed for quashing of FIR-451/2007 dt.27/10/07 lodged at PS Amer (Jaipur City-North) for offences U/Ss 420, & 384, IPC.

A written report was submitted by complainant Hariram alleging inter-alia that he and persons like him intended to attend cattle fare where animals are being sold and petitioner-contractor, has been authorized to charge entry fee from each of fare participants alongwith their cattles but the fact is that he was issuing receipt of Rs.150/- while illegally charging Rs.450/- from each of such participants on their entry to the fare and when it was opposed by participants, petitioner started beating them, whose names have been disclosed in the report and who had paid Rs.450/- to the petitioner while payment receipt of only Rs.150/- was being issued. On aforesaid report, FIR-451/2007 dt.27/10/07 lodged at PS Amer (Jaipur City-North) for offences

U/Ss 420, & 384, IPC.

Counsel for petitioner submits that since only fact alleged by complainant is that extra money was being demanded by petitioner – in lieu whereof, he was issuing payment receipt only of Rs.150/- which in fact he was authorised to charge from each participant in the fare; as such no offence u/s 380, IPC is made out and according to petitioner, there is no delivery of property, therefore, such offence U/s 420, IPC is not made out. In support, Counsel placed reliance on the decision of Apex Court in **Dhananjay Vs. State of Bihar (2007(1) Crimes 299 (SC)** and of Gujarat High Court in **Nilesh Lalit Parkeh Vs. State of Gujarat (2003 CrLJ 1018**).

Complainant is only an informant thereby he has made complaint to be investigated by police that money is unauthorisedly being charged by petitioner who is contractor and against payment of Rs.450/- , as alleged, he has issued payment receipt of Rs.150/- only to each of participants of the cattle fare, whose names have also been disclosed in the FIR. From a perusal of the FIR, prima facie commission of offence is made out. Judgment of Apex Court in **Dhananjay Vs. State of Bihar (supra)** relied upon by Counsel is of no assistance for the reason that it was a case of the informant from whom no money was

charged while in the facts of instant case, it has specifically been alleged in FIR that money has been charged and paid by so many persons who has been named in the FIR, as well and complainant is the informant on whose instance FIR has been registered.

Judgment of Gujarat High Court in **Nilesh Lalit Parkeh Vs. State of Gujarat (supra)** is also of no assistance because it only laid down the principles that if there is no prima facie commission of offence made out from the FIR, investigation is not required to be conducted. Whereas in instant case, this Court has expressed opinion upon perusal of FIR about commission of offences, alleged, and it is for the investigating officer to examine how far truth is there in the complaint made.

Consequently, misc. petition fails and is hereby dismissed.

(**Ajay Rastogi), J.**

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